

Kansas Department of Agriculture
Division of Water Resources
 APPROVAL OF NEW APPLICATION WORKSHEET

1. File No.: 51092	2. Status Change Date: 8/29/2024	4. Field Office: 01 - Topkea GMD: Structures File No.: Filing/Priority Date: 08/21/2023 Application Complete Date:
3. Package File No(s):		
5a. <input checked="" type="checkbox"/> Applicant <input checked="" type="checkbox"/> Owner <input type="checkbox"/> WUC <input type="checkbox"/> Address Change Person ID 39242 Add Seq#	5b. <input checked="" type="checkbox"/> Owner <input checked="" type="checkbox"/> WUC <input type="checkbox"/> Address Change Person ID 69156 Add Seq#	
RICK ELNICKI 130 S HIGHWAY 69 PITTSBURG, KS 66720	BRICE ELNICKI 191 DEER CREEK COURT PITTSBURG, KS 66762	
5c. <input type="checkbox"/> Owner <input type="checkbox"/> WUC <input type="checkbox"/> Address Change Person ID Add Seq#	5d. <input type="checkbox"/> Owner <input type="checkbox"/> WUC <input type="checkbox"/> Address Change Person ID Add Seq#	
6. Change No.: <input type="checkbox"/> PD <input type="checkbox"/> PU <input type="checkbox"/> UMW Base Acres: Year: Min Reasonable Q: Previous UMW: MDS Gauge: Active Admin? <input type="checkbox"/> Completion/Start Date: 12/31/2025 Perfection/Expiration Date: 12/31/2029		7. Use of Water <input type="checkbox"/> Groundwater <input checked="" type="checkbox"/> Surface Water UMW: IRR-Irrigation UMW: UMW:
8. Action Trail		
9. Special Conditions		
10. 5YR Allocation Type: Start Year: 5YR Quantity: Base Acres: Comment:		
11. Sand & Gravel Proj ID: <input type="checkbox"/> Active <input type="checkbox"/> Dredge <input type="checkbox"/> IND Evap <input type="checkbox"/> Jr Evap <input type="checkbox"/> Other Diversion <input type="checkbox"/> Rpt on Sr		
12. Waiver Rule ID: <input type="checkbox"/> New Date Requested: Applies: Rule No.: Justification: Rule Type: Rule SubType:		
Comments	Processed CCB 08/27/2024	Entered 8/30/2024 KAnderson
	Reviewed KAK 8/28/2024	

MEMORANDUM TO FILE

Division of Water Resources, Water Appropriation Program

Date: August 27, 2024

From: Colin Barclay, Environmental Scientist

Re: New Application File No. 51,092 – Rick Elnicki

Summary

Rick Elnicki has filed the above referenced application to appropriate 276 acre-feet of surface water from the natural flows of East Cow Creek Trib 1, diverted and stored in a reservoir (borrow pit) with an estimated capacity of 153 acre-feet. Since the capacity is less than the proposed appropriation, diversion and storage will be incrementally accumulated as space becomes available and 276 acre-feet will be rediverted from storage at a rate of 2,000 gallons per minute for irrigation purposes on 276 acres of cropland. The applicant has signed the application form affirming legal access to the point of diversion. Structures has determined that no permitting is required for the reservoir, which appears to be an old borrow pit.

Reasonable Quantity and Safe Yield

Maximum reasonable quantity was determined to be 292.59 acre-feet. As per K.A.R. 5-6-5 maximum reasonable annual quantity for storage of water for beneficial use in a reservoir. The maximum reasonable annual quantity in a reservoir shall be limited to the lesser of the following.

As per K.A.R. 5-6-4, a runoff calculation was prepared and found that 292.59 acre-feet of runoff could be expected on a 20% chance of occurrence from the following variables.

- ~130-acre drainage area.
- Mean annual precipitation of 44 inches per year.
- Soil covers complex number of 80.

As per K.A.R. 5-6-5(b)(1)(A) and (B) Three years of direct and indirect use was calculated to be 833.75 acre-feet of water.

- 276 acres of ground x 1.0 acre-feet per acre per year in Crawford County = 276 acre-feet of direct use
- 1 inches of net evaporation /12 inches per foot = .083 feet of net evaporation x 23 surface acres = 1.917 acre-feet of indirect use
- 276 acre-feet of direct use + 1.917 acre-feet of indirect use = 277.917 acre-feet per year
- 277.917 acre-feet per year x 3 years = 833.75 acre-feet.

As per K.A.R. 5-6-5(2)(A) 1 year of direct, indirect, and reservoir capacity was calculated to be 430.917 acre-feet of water.

- 276 acres of ground x 1.0 acre-feet per acre per year in Crawford County = 276 acre-feet of direct use
- 1 inches of net evaporation /12 inches per foot = .083 feet of net evaporation x 23 surface acres = 1.917 acre-feet of indirect use
- Reservoir capacity is 153 acre-feet = 23 acres x 10 feet average depth / 3 (shape of reservoir)
- acre-feet of direct use 277.917 + 1.917 acre-feet of indirect use + 153 acre-feet of reservoir capacity = 430.917 acre-feet.

With the maximum reasonable quantity being 292.59, the application requesting 276.0 acre-feet appears to be reasonable.

Nearby Water Rights

Seven (7) nearby neighbors were found to be within one-half (½) mile upstream and downstream of the applicant's property boundary. Nearby notification letters were sent out on July 16, 2024. No written comments or concerns were received during the 15-day comment period. Two phone calls were received from nearby neighbors asking questions about the proposed project. After an explanation of the location of the reservoir and the applicants plans for irrigation, both nearby neighbors expressed that they did not have any concerns about the project and would not be submitting written comments.

Recommendations

The application was sent to for consideration to Nathan Westrup, Water Commissioner of the Topeka Field Office, and recommended for approval in an e-mail dated August 7, 2024.

The application complies with all regulations and the application is subject to minimum desirable streamflow requirements. Approval of the application will not impair senior water rights nor prejudicially or unreasonably affect the public interest. Therefore, it is recommended that the referenced application be approved.



Colin Barclay
Environmental Scientist
Water Appropriation Program

Re: 51092 review and recommendation request

Barclay, Colin [KDA] <Colin.Barclay@ks.gov>

Wed 8/7/2024 11:59 AM

To: Westrup, Nathan [KDA] <Nathan.Westrup@ks.gov>; Johnson, Shaun [KDA] <Shaun.Johnson@ks.gov>

Nathan,

I will rework my memo to include those corrections. Thank you for catching that.

Best,

Colin Barclay
Environmental Scientist
Division of Water Resources
Kansas Department of Agriculture
Phone: (785) 564-6628
Colin.Barclay@ks.gov

From: Westrup, Nathan [KDA] <Nathan.Westrup@ks.gov>

Sent: Wednesday, August 7, 2024 10:57 AM

To: Barclay, Colin [KDA] <Colin.Barclay@ks.gov>; Johnson, Shaun [KDA] <Shaun.Johnson@ks.gov>

Subject: RE: 51092 review and recommendation request

Hey Colin,

Would you mind rewording the first sentence of the memo a little?

“Rick Einicki has filed the above referenced application to appropriate 276 acre-feet of surface water directly out of a tributary of Cow Creek for storage and re-diversion in a 23-acre reservoir.”

To me, the word direct is synonymous with a direct diversion with a pump. Also, I think the most relevant component of a reservoir is the capacity...maybe mention both the capacity and surface area, but definitely the capacity. At the time of the memo, we should also have the tributary named and referenced. Lastly, I believe his last name is spelled Elnicki?

How about this for the first couple sentences: Rick Elnicki has filed the above referenced application to appropriate 276 acre-feet of surface water from the natural flows of East Cow Creek trib XX, diverted and stored in a reservoir (borrow pit) with an estimated capacity of 153 acre-feet. Since the capacity is less than the proposed appropriation, diversion and storage will be incrementally accumulated as space becomes available and 276 acre-feet will be rediverted from storage at a rate of 2,000 gallons per minute for irrigation purposes on 276 acres of cropland.

There is mention of “Clay County” rather than Crawford County a couple times in the memo.

Otherwise, I have no objection to approval.

Thanks,

Nathan Westrup, Water Commissioner

Topeka Field Office
Division of Water Resources
Kansas Department of Agriculture
Phone: 785-296-7064
Mobile: 785-230-2991
Nathan.Westrup@ks.gov

From: Barclay, Colin [KDA] <Colin.Barclay@ks.gov>
Sent: Tuesday, August 6, 2024 12:09 PM
To: Westrup, Nathan [KDA] <Nathan.Westrup@ks.gov>; Johnson, Shaun [KDA] <Shaun.Johnson@ks.gov>
Subject: 51092 review and recommendation request

Nathan and Shaun,

I have attached my draft memo for application 51,092. This is a surface water application to use an old borrow pit for the irrigation of 276 acres in Crawford County. I sent out 7 nearby neighbor letters on July 16, 2024, and I received two phone calls from two different nearbys but they only had questions about the project. Both mentioned they did not have any concerns and would not be submitting written comments about the file.

Please let me know if you have any questions.

Best,

Colin Barclay
Environmental Scientist
Division of Water Resources
Kansas Department of Agriculture
Phone: (785) 564-6628
Colin.Barclay@ks.gov

RE: 51092 possible determinations

Phillips, Janelle [KDA] <Janelle.Phillips@ks.gov>

Thu 7/11/2024 2:54 PM

To: Barclay, Colin [KDA] <Colin.Barcly@ks.gov>

He does not need anything from structures

Janelle Phillips, P.E.
Water Structures Team Lead
Division of Water Resources
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan KS 66502
785-564-6656 - office
785-307-8292 – cell
Janelle.phillips@ks.gov

From: Barclay, Colin [KDA] <Colin.Barcly@ks.gov>**Sent:** Thursday, July 11, 2024 2:49 PM**To:** Phillips, Janelle [KDA] <Janelle.Phillips@ks.gov>**Subject:** 51092 possible determinations

Hello Janelle,

I have an application with a surface water reservoir located in the east half of Section 3, Township 30, Range 25 East. (37.4640580283371, -94.6583778808317) (WR File No. 51092). It looks like an old borrow pit that has been in existence for some time. Do you have any structures determinations for this reservoir?

Thank you!

Colin Barclay

Environmental Scientist

Division of Water Resources

Kansas Department of Agriculture

Phone: (785) 564-6628

Colin.Barcly@ks.gov

THE STATE OF KANSAS

KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

DIVISION OF WATER RESOURCES
Earl D. Lewis Jr., Chief Engineer

APPROVAL OF APPLICATION and PERMIT TO PROCEED

(This Is Not a Certificate of Appropriation)

This is to certify that I have examined Application, **File No. 51,092** of the applicant

Rick Elnicki
130 S Highway 69
Pittsburg KS 66762-8525

for a permit to appropriate water for beneficial use, together with the maps, plans and other submitted data, and that the application is hereby approved and the applicant is hereby authorized, subject to vested rights and prior appropriations, to proceed with the construction of the proposed diversion works (except those dams and stream obstructions regulated by K.S.A. 82a-301 through 305a, as amended), and to proceed with all steps necessary for the application of the water to the approved and proposed beneficial use and otherwise perfect the proposed appropriation subject to the following terms, conditions and limitations:

1. That the priority date assigned to such application is **August 21, 2023**.

2. That the water sought to be appropriated shall be used for irrigation use on land described in the application, as follows:

Sec. Twp. Range	NE¼				NW¼				SW¼				SE¼				TOTAL
	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
3 - 30S - 25E		5.0	22.0	38.0			30.5	40.0	39.5	33.0			27.0	37.0		4.0	276.0

3. That the appropriation sought shall be limited to all natural flows of an unnamed tributary of Cow Creek, designated in the office of the Chief Engineer as Cow Creek Trib 1, not needed to satisfy all vested rights and prior appropriation rights to be incrementally accumulated as reservoir storage space becomes available to a maximum extent of **276 acre-feet** of water per calendar year in a reservoir created by a dam located in the Northwest Quarter of the Southwest Quarter of the Northeast Quarter (NW¼ SW¼ NE¼) of Section 3, more particularly described as being near a point 3,380 feet North and 2,590 feet West of the Southeast corner of said section, in Township 30 South, Range 25 East, Crawford County, Kansas, to provide **276 acre-feet** of water as needed for direct irrigation use, to be withdrawn, released or otherwise diverted from the reservoir at a re-diversion rate of approximately **2,000 gallons per minute (4.46 c.f.s.)**. A reasonable maximum re-diversion rate will be established during the perfection period and assigned at certification.

4. That installation of works for diversion of water shall be completed on or before **December 31, 2025**, or within any authorized extension thereof. The applicant shall notify the Chief Engineer and pay the statutorily required field inspection fee of \$400.00 when construction of the works has been completed. Failure to timely submit the notice and the fee will result in revocation of the permit. Any request for an extension of time shall be submitted prior to the expiration of the deadline and shall be accompanied by the required statutory fee of \$100.00.

5. That the proposed appropriation shall be perfected by the actual application of water to the proposed beneficial use on or before **December 31, 2029**, or any authorized extension thereof. Any request for an extension of time shall be submitted prior to the expiration of the deadline and shall be accompanied by the required statutory fee of \$100.00.

6. That the applicant shall not be deemed to have acquired a water appropriation for a quantity in excess of the amount approved herein nor in excess of the amount found by the Chief Engineer to have been actually used for the approved purpose during one calendar year subsequent to approval of the application and within the time specified for perfection or any authorized extension thereof.

7. That the use of water herein authorized shall not be made so as to impair any use under existing water rights nor prejudicially and unreasonably affect the public interest.

8. That the right of the appropriator shall relate to a specific quantity of water and such right must allow for a reasonable raising or lowering of the static water level and for the reasonable increase or decrease of the streamflow at the appropriator's point of diversion.

9. That this permit does not constitute authority under K.S.A. 82a-301 through 305a to construct any dam or other obstruction; nor does it grant any right-of-way, or authorize entry upon or injury to, public or private property.

10. That all re-diversion works constructed under the authority of this permit into which any type of chemical or other foreign substance will be injected into the water pumped from the diversion works shall be equipped with an in-line, automatic quick-closing, check valve capable of preventing pollution of the source of the water supply. The type of valve installed shall meet specifications adopted by the Chief Engineer and shall be maintained in an operating condition satisfactory to the Chief Engineer.

11. That an acceptable water flow meter shall be installed and maintained on the re-diversion works authorized by this permit in accordance with Kansas Administrative Regulations 5-1-4 through 5-1-12 adopted by the Chief Engineer. The required water flow meter shall be used to provide an accurate quantity of water diverted as required for the annual water use report (including the meter reading at the beginning and end of the report year).

12. That the applicant shall maintain accurate and complete records from which the quantity of water diverted during each calendar year may be readily determined and the applicant shall file an annual water use report with the Chief Engineer by March 1 following the end of each calendar year. Failure to file the annual water use report by the due date shall cause the applicant to be subject to a civil penalty.

13. That no water user shall engage in nor allow the waste of any water diverted under the authority of this permit.

14. That diversion of natural flows shall not take place unless there is water available to satisfy all demands by senior water rights and permits.

15. That the right to appropriate water under authority of this permit is subject to any minimum desirable streamflow requirements identified and established pursuant to K.S.A. 82a-703c for the source of supply to which this water right applies.

16. That failure without cause to comply with the provisions of this permit and its terms, conditions and limitations will result in the forfeiture of the priority date, revocation of the permit and dismissal of the application.

Ordered this *29* day of *August*, 2024, in Manhattan, Riley County, Kansas.

Lane P. Letourneau

Lane P. Letourneau, P.G.
Water Appropriation Program Manager
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this *29* day of *August*, 2024, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.

Vickie L. Belanger
Notary Public



1320 Research Park Drive
Manhattan, KS 66502
785-564-6700
www.agriculture.ks.gov



900 SW Jackson, Room 456
Topeka, KS 66612
785-296-3556

Mike Beam, Secretary

Laura Kelly, Governor

September 6, 2024

RICK ELNICKI
130 S HIGHWAY 69
PITTSBURG KS 66720-8525

RE: Appropriation of Water
File No. 51,092

Dear Mr. Elnicki:

Enclosed is a permit authorizing you to proceed with construction of the proposed diversion works and to appropriate water for beneficial use as set forth in the permit. Your attention is directed to the enclosures and to the terms, conditions, limitations, and requirements specified in this permit.

Notice must be filed on the enclosed form once the diversion works have been completed. Failure to complete the diversion works within the time allowed, or within any authorized extension of time thereof, will result in dismissal of this permit. If you need an extension of time, you must request it before the deadline for completion set forth in the permit. Any request for an extension of time must be accompanied by the statutorily required fee, which is currently \$100.00.

An annual water use report must be filed with the Chief Engineer by March 1, following the end of each calendar year. If a complete annual water use report is not received by the deadline, then a fine may be assessed and all water use under such permit or right may be suspended. Reports submitted in paper form will be assessed a \$20 per file number paper filing fee. In order to avoid this filing fee, you may submit your report online at www.kswaterusereport.org.

The approval of your application constitutes a permit to appropriate water. It does not give authority to construct any dam or other stream obstruction regulated by K.S.A. 82a-301 through 305a. It does not give authority to access any right-of-way or authorize trespassing upon or injury to public or private property. It may also be necessary for you to comply with other local, state or federal requirements.

Also included is an informational sheet that sets forth the procedure to obtain a Certificate of Appropriation which will establish the extent of your perfected water right. Additional information and applicable forms may be found on our website at agriculture.ks.gov/dwr. If you have any questions or need assistance with any of these requirements, please contact our office at 785-564-6640, or your local Topeka Field Office at (785) 296-5733. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

Kristen A. Baum
New Applications and Changes Supervisor
Division of Water Resources

KAB:kak:ccb
Enclosure(s)
pc: Topeka Field Office
Brice Elnicki

RIGHT TO A HEARING AND TO ADMINISTRATIVE REVIEW

If you are aggrieved by this Order, then pursuant to K.S.A. 82a-1901, you may request an evidentiary hearing before the Chief Engineer or request administrative review by the Secretary of Agriculture. Failure to request an evidentiary hearing before the Chief Engineer does not preclude your right to administrative review by the Secretary.

To obtain an evidentiary hearing before the Chief Engineer, a written request for hearing must be filed within 15 days after service of this Order as provided in K.S.A. 77-531 (i.e., within a total of 18 days after this Order was mailed to you), with: Kansas Department of Agriculture, Attn: Legal Division, 1320 Research Park Drive, Manhattan, Kansas 66502, FAX (785) 564-6777.

If you do not file a request for an evidentiary hearing before the Chief Engineer, you may petition for administrative review of the Order by the Secretary of Agriculture. A petition for review shall be in writing and state the basis for requesting administrative review. The request for review may be denied if the request fails to clearly establish factual or legal issues for review. See K.S.A. 77-527. The petition must be filed within 30 days after service of this Order as provided in K.S.A. 77-531 (i.e., within a total of 33 days after this Order was mailed to you), and be filed with: Secretary of Agriculture, Attn: Legal Division, Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas 66502, FAX (785) 564-6777.

If neither a request for an evidentiary hearing nor a petition for administrative review is filed as set forth above, then this Order shall be effective and become a final agency action as defined in K.S.A. 77-607(b). Failure to timely request either an evidentiary hearing or administrative review may preclude further judicial review under the Kansas Judicial Review Act.

CERTIFICATE OF SERVICE

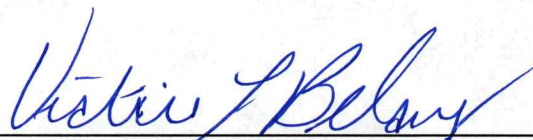
On this *6th* day of *September*, 2024, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 51,092, dated *August 29*, 2024, was mailed postage prepaid, first class, US mail to the following:

RICK ELNICKI
130 S HIGHWAY 69
PITTSBURG KS 66720

With photocopies to:

BRICE ELNICKI
191 DEER CREEK COURT
PITTSBURG KS 66762

KDA-DWR Topeka Field Office



Division of Water Resources